

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

**JAY ENCISO, Representative of
JAIRO ENCISO (Deceased),**

Plaintiff,

vs.

Civ. No. 21-323 JCH/JFR

**PRESBYTERIAN HEALTHCARE SERVICES;
ROGER GILDERSLEEVE, M.D.; ANDREW
EDWARDS, M.D.; GABRIEL PALLEY, M.D.;
HERMAN GLEICHER, M.D.; ILSE PONCE-
HERNANDEZ, R.N.; and DARLENE GONZALES,
R.N.,**

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS
AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on the Proposed Findings of Fact and Recommended Disposition by United States Magistrate Judge John F. Robbenhaar, filed July 29, 2021. Doc. 18. Objections were due by no later than August 12, 2021. The parties have not filed any objections. The failure to make timely objections to the Magistrate Judge's Proposed Findings and Recommended Disposition waives appellate review of both factual and legal questions. *U.S. v. One Parcel of Real Property*, 73 F.3d 1057, 1059 (10th Cir. 1996).

IT IS THEREFORE ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition (Doc. 18) are **ADOPTED**.

IT IS FURTHER ORDERED that:

1. Plaintiff's ACA claim in his Amended Complaint for discrimination based on age pursuant to the Age Discrimination Act is **DISMISSED WITHOUT PREJUDICE** for lack of subject matter jurisdiction;

2. Plaintiff's ACA claim in his Amended Complaint for discrimination based on disability pursuant to Section 504 of the Rehabilitation Act is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted;

3. Plaintiff's Amended Complaint alleging discrimination based on Jairo Enciso's ALS being "incurable" is **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief be granted; and

4. Plaintiff's state law claims are **REMANDED** to the Second Judicial District Court, State of New Mexico, County of Bernalillo.


SENIOR UNITED STATES DISTRICT JUDGE